IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4992 OF 2006

Shri Badrinarayan S. Bhandari & Ors. .. Petitioners.
Vs.
Shri Omprakash S. Bhandari & Ors. .. Respondents.

Mr.G.S.Godbole for the petitioners.

CORAM : D.B.BHOSALE, J.
DATED : 11TH SEPTEMBER, 2006

P.C.:

. Heard learned counsel for the petitioners.

2. By this writ petition, the petitioners have impugned the order dated 13.3.2006 passed by the appeal court on the application at Exhibit-42 filed by the petitioners seeking direction to respondent nos.1, 3 to 5 to deposit Rs.6,00,000/- collected by them from the tenants in the property in dispute during pendency of the suit. That application was rejected by the trial Court by the following order:

> . "Perused application and Say (Ex.50 & 54). The suit for partition. The present application would be subject matter of Mesne profits which can be decided after the suit. Hence I pass the following order."

3. The petitioners thereafter filed an application at Exhibit-64 seeking recalling of that

order passed on application at Exhibit-42 dated 13.3.2006. That application at Exhibit-64 came to be rejected vide order dated 13.6.2006 by the following order:

> . "Perused application and say of Respondent No.3 at Ex.59. Appellant has adopted say of Respondent No.3. Both have strongly objected on the ground that the applicant is not maintainable. Complete adjudication not yet done. The right of parties are in dispute and not finally settled. No direction i.e. decree about recovery of rent. Heard both sides Advocates. I have gone through written arguments of applicants. Present dispute is about partition and declaration. Therefore, unless the rights of the parties are decided, no such direction could be given to any party. Ex.42 is decided after considering the legal aspects. Hence, I pass the following order."

4. This petition arises from the suit for partition. The suit was decreed and the substantive appeal against the decree is pending before the appeal court. At this stage it would not be proper to hold an enquiry whether the respondents are liable to deposit the amount of rent. That could be a subject matter of an enquiry as to mesne profits under Order 26 Rule 12 of the Code of Civil Procedure as rightly observed by the appeal court. I see no reason to interfere with the order impugned in the writ jurisdiction of this Court under Article 227 of the Constitution of India. However, in the interest of justice the hearing of appeal is expedited. The petition is, accordingly, disposed of.

(D.B.Bhosale, J.)